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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 SECURITIES AND EXCHANGE  
12 COMMISSION,

13 Plaintiff,

14 v.

15 LOUIS V. SCHOOLER and FIRST  
16 FINANCIAL PLANNING  
17 CORPORATION d/b/a WESTERN  
18 FINANCIAL PLANNING  
19 CORPORATION,

20 Defendants.

Case No.: 3:12-CV-02164-GPC-JMA

**ORDER APPROVING:**

**SALE OF BRATTON VIEW  
PROPERTY AND AUTHORITY TO  
PAY BROKER'S COMMISSION**

**[ECF No. 1480]**

21 Before the Court is the Receiver's Motion for Approval of Sale of Bratton View  
22 Property ("Motion"). ECF No. 1480. No opposition was filed. Based upon a review of  
23 the moving papers and the applicable law, the Court **GRANTS** the Receiver's motion.

**BACKGROUND**

24 **A. The SEC Enforcement Action**

25 On January 21, 2016, the Court granted the SEC's motion for final judgment  
26 against Defendant Louis V. Schooler. ECF No. 1170. The SEC had initiated this civil  
27 action against Defendant Schooler and Western Financial Planning Corporation  
28 ("Western") four years earlier, on account of their practice of defrauding investors into

1 purchasing unregistered securities. *Id.* (citing Second Summary Judgment Order, ECF  
2 No. 1081). To carry out the scheme, Defendant Western bought undeveloped real estate,  
3 with cash or through financing, and simultaneously formed one or more General  
4 Partnerships (“GPs”) to own the land. First Summary Judgment Order, ECF No. 1074 at  
5 10. Western then sold General Partnership units to investors and sold the undeveloped  
6 real estate to the General Partnerships. *Id.* at 10. In total, Western raised approximately  
7 \$153 million from almost 3,400 investors through implementing this scheme. *Id.*

### 8 **B. The Decline of the General Partnership Assets**

9 In 2013, the Court-appointed Receiver, Thomas Hebrank, engaged licensed  
10 appraisers to value the 23 properties owned by the General Partnerships. ECF No. 203 at  
11 2. Those professionals determined that the land was worth \$16,328,000 and that the net  
12 appraised value (appraised value less outstanding balances on all mortgages) of the  
13 properties was \$12,860,661. *Id.* The net appraised value represented just 8.41% of the  
14 total funds that the general partners had invested in the land. *Id.* The Receiver further  
15 estimated that, based on the then-current appraised values of the land, the average GP  
16 investor would suffer an 88.40% loss if the GP properties were sold in 2013. *Id.*

17 Three years later, soon after final judgment was entered, the Receiver moved for  
18 authority to conduct an Orderly Sale of the General Partnership Properties (“Orderly  
19 Sale”). Motion for Orderly Sale, ECF No. 1181-1. In the Motion, the Receiver indicated  
20 that the aggregate value in the GP accounts had been steadily decreasing while litigation  
21 was ongoing. *See id.* In September 2012, the Receivership had assets of \$6.6 million.  
22 *Id.* at 1. By the end of 2015, the assets had dropped to \$3.5 million, and the Receiver had  
23 reason to believe that the value of the Receivership would continue to drastically  
24 decrease through the end of 2016.<sup>1</sup> This decline, he noted, was due to three main factors:  
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27 <sup>1</sup> The Receiver provided the Court with projections that the Receivership would further decline to \$1.8  
28 million by the end of 2016. Indeed, the Receiver’s projection has since proved to be accurate. The  
Eighteenth Interim Status Report submitted by the Receiver indicates that the Receivership’s current cash  
balance is \$1,546,447. ECF No. 1441 at 20.

1 (1) 14 of the 23 properties were not appreciating in value<sup>2</sup>; (2) the properties were not  
2 worth enough to cover the costs of the GPs carrying the properties; and (3) low levels of  
3 investor contributions to pay GP administrator fees, tax preparation fees, property taxes,  
4 property insurance premiums, and notes owed to Western. *See id.* at 1-2. In other words,  
5 the Receiver concluded, because the money being spent to hold the GP properties was  
6 disproportionately high in relation to the value of the GP's real estate assets, the  
7 Receivership was in a steady decline. *Id.*

8 In order to prevent the value of the Receivership from falling into further decline,  
9 the Receiver proposed that the GP properties be sold in accordance with Court-approved  
10 orderly sale procedures. *Id.* The Receiver's proposal explained that the best way to  
11 maximize the value of all of the GP assets for the benefit of all investors, irrespective of  
12 any given investors' direct property interest, was to initiate an orderly sale of the GP  
13 properties. *Id.* The Receiver estimated that the Receivership, after conducting sales of  
14 the GP properties, Western's properties and asset recovery, would be worth \$21,804,826.  
15 *Id.* at 16.

### 16 **C. The Receiver's Motion for Orderly Sale**

17 On May 20, 2016, the Court held a hearing on the Receiver's Motion for Orderly  
18 Sale, at which time the Court heard from the SEC, Defendant, the Receiver, and the  
19 investor-intervenors — that is, those investors who were granted permission under Rule  
20 23 to intervene to oppose the Receiver's Motion. *See* ECF No. 1298. A short time  
21 thereafter, on May 25, 2016, the Court approved, in part, the Receiver's Orderly Sale  
22 process.<sup>3</sup> ECF No. 1304.

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25 <sup>2</sup> By way of example, the Receiver notes that the value of these 14 properties in 2016, \$3,732,815, was about  
26 \$400,000 less than their value in 2013, \$4,137,000. *Id.* at 2.

27 <sup>3</sup> The Court directed the Receiver to file a Modified Orderly Sale Process that incorporated the public sale  
28 process consistent with the requirement of 28 U.S.C. § 2001. ECF No. 1304. The Receiver filed a modified  
proposal on June 8, 2016 (ECF No. 1309) and the Court approved the modified proposal on August 30, 2016  
(ECF No. 1359).

1 In approving the Orderly Sale, the Court addressed and evaluated the concerns  
2 expressed by the Receiver, the SEC, and myriad investors, all of whom held differing  
3 positions on whether the Orderly Sale would benefit the Receivership estate. *See*  
4 *generally* ECF Nos. 1181 (Motion for Orderly Sale), 1232 (SEC Response), 1234 (Dillon  
5 Investors' Response), 1235 (Graham Investors' Response); *see also, e.g.*, ECF Nos. 1240,  
6 1242, 1244, 1249-1257 (Letters from Investors). The Court also took into consideration  
7 the recommendations of the investors' experts, as set forth in the Xpera Report. *See* ECF  
8 No. 1304 at 16. The Xpera Report, the Court noted, substantially agreed with the  
9 Receiver on how to maximize the value of the Receivership estate and, for the most part,  
10 agreed on the appraised value of the various GP properties. *Id.* As such, the Court  
11 directed the Receiver, where feasible, to incorporate the recommendations of the Xpera  
12 Report into his ultimate Orderly Sale proposal. *Id.* at 19.

13 On July 22, 2016, the Receiver moved for permission to engage CBRE, a real  
14 estate brokerage firm, as a consultant in order to weigh the pros and the cons of the Xpera  
15 Report. ECF No. 1341-1. The Court granted the Receiver's motion on August 30, 2016.  
16 ECF No. 1359. CBRE presented its findings on the GP properties on October 24, 2016.  
17 ECF No. 1419 (filed under seal). On November 22, 2016, the Receiver submitted a  
18 report evaluating the Xpera Report recommendations. ECF No. 1405. The Court  
19 reviewed the Receiver's report and adopted the recommendations contained therein on  
20 December 12, 2016. ECF No. 1423.

#### 21 **D. Bratton View Property**

22 Bratton View is one of the three parcels in the Bratton Valley property, along with  
23 Honey Springs and Valley Vista. ECF No. 1480 at 2. The Bratton Valley properties are  
24 located in the City of Jamul in San Diego County. *Id.* at 3.

25 On January 14, 2016, the Court approved the Receiver to engage a broker to list  
26 the three Bratton Valley properties for sale. *Id.* at 2; *see also* ECF No. 1168. The Court  
27 approved the sale of one of the Bratton parcels, the Honey Springs property, for \$240,000  
28 on March 20, 2017, and the sale closed in April 2017. *Id.* The Court has also recently

1 approved the sale of the Valley Vista property for \$240,000. *See id.* The Bratton View  
2 property is the last of the Bratton Valley properties to be sold.

3 In 2013, the Receiver valued the Bratton View property at \$68,667 and all three  
4 Bratton Valley properties at a combined total of \$206,000. ECF No. 1405, Ex. A at 11.  
5 Two years later, in 2015, the Broker Opinion Value (BOV) of the Bratton View property  
6 was \$270,236 and the BOV of the combined Bratton properties was \$756,548. *Id.*  
7 Although the Xpera Report did not value the Bratton View property standing alone, it did  
8 value the property as one of the three Bratton Valley properties, and the value that Xpera  
9 ascribed to all three properties corresponded to the BOV value of the properties.<sup>4</sup> *Id.*  
10 The Xpera report, moreover, concurred in the Receiver's recommendation that the  
11 Bratton Valley properties be sold now. *See id.*

12 In April 2016, the Receiver received an offer from Felipi and Ofelia Aguilar<sup>5</sup> to  
13 buy the Bratton View property for \$239,000, its full listing price. ECF No. 1480-1 at 2.  
14 A second buyer concurrently submitted an offer for the same, full list price. *Id.* The  
15 Receiver made a counter-offer to both prospective purchasers requesting their best and  
16 final offer. *Id.* Felipi and Ofelia Aguilar responded with an offer of \$256,500, which  
17 exceeded the second buyer's offer by \$1,500. *Id.* at 3. The Receiver and Aguilar  
18 thereafter executed a Vacant Land Purchase Agreement and the Aguilar completed due  
19 diligence and contingency removal on May 17, 2017. *Id.*

20 In accordance with the Court-approved modified Orderly Sale procedures, *see*  
21 *generally* ECF No. 1309, 1359, the Receiver sent notice of the offer to investors, but no  
22 responses were received. ECF No. 1480-1 at 4. After executing the purchase agreement,  
23 the Receiver also laid out a timeline for the submission of qualified overbids pursuant to  
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26 <sup>4</sup> The Xpera Report valued the Bratton View property, along with Honey Springs and Valley Vista  
27 properties, between \$629,878 (low valuation) and \$944,816 (high valuation). ECF No. 1405, Ex. A at  
28 11. The Receiver's appraisal of Bratton View, together with Honey Springs and Valley Vista, totaled  
\$756,548, placing the Receiver's appraisal within the range proposed by Xpera. *See id.*

<sup>5</sup> The Aguilar were the buyers of the aforementioned Honey Springs property.

1 the modified Orderly Sale procedures. *Id.* at 7-10. The Receiver received a timely and  
2 qualified overbid for \$265,000 from Jesus and Augustine Martinez. *Id.* The Aguilar's  
3 earnest money deposit, therefore, "was returned to them and escrow was opened with"  
4 the overbidder. *Id.* The Receiver and overbidder have since executed a Vacant Land  
5 Purchase Agreement for the property for the overbid price of \$265,000. *Id.*

#### 6 **E. Conclusion**

7 The Court finds that the purchase price of \$265,000 is reasonable in light of the  
8 Receiver's 2015 appraisal of the Bratton View property and the Xpera Report. The BOV  
9 value obtained by the Receiver estimated that the property was worth \$270,236, which  
10 places the purchase price just \$5,000 shy of the 2015 estimate. Moreover and more  
11 importantly, the Court notes that with this sale, the Bratton Valley properties have been  
12 sold for \$745,000, which correlates to the BOV of the properties (\$756,548) and falls  
13 within the range provided by the Xpera Report (\$629,878 – \$944, 816).

14 The Court is also satisfied that the Receiver has complied with the modified  
15 Orderly Sale procedures. The Receiver's notice of the sale adhered to the modified  
16 Orderly Sale procedures, which require that notice of the sale be published "in the  
17 county, state, or judicial district of the United States *wherein the realty is situated.*" 28  
18 U.S.C. § 2002 (emphasis added), by publishing notice in the San Diego Union Tribune  
19 and by providing notice to the investors. Accordingly, and given that no opposition to  
20 the present Motion has been filed, or raised, and that a qualified overbid was received, the  
21 Court **GRANTS** Receiver's motion for approval of sale (ECF No. 1480).

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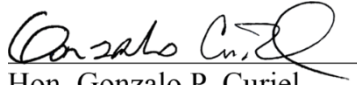
**ORDER**

The Receiver's Motion for Approval of Sale of Bratton View Property and Authority to Pay Broker's Commission ("Motion") of Thomas C. Hebrank ("Receiver"), the Court-appointed receiver for First Financial Planning Corporation d/b/a Western Financial Planning Corporation ("Western"), its subsidiaries and the General Partnerships listed in Schedule 1 to the Preliminary Injunction Order entered on March 13, 2013 (collectively, "Receivership Entities"), having been reviewed and considered by this Court, the Receiver having notified the Court regarding the receipt of a qualified overbid and the results of the auction (Dkt. No. 1493), and for good cause appearing therefore, the Court finds as follows:

1. The Motion is granted;
2. The sale of the Property known as the Bratton View property, as described on Exhibit A to the Declaration of Thomas C. Hebrank in support of the Motion ("Property"), by Thomas C. Hebrank, as receiver for Bratton View Partners, to Augustine Martinez and Jesus Martinez is confirmed and approved;
3. The Vacant Land Purchase Agreement and Joint Escrow Instructions attached as Exhibit A to the Notice of Receipt of Qualified Overbid and Results of Auction for Sale of Bratton View Property is confirmed and approved;
4. The purchase price of \$265,000 for the Property is confirmed and approved;
5. The Receiver is immediately authorized to complete the sale transaction, including executing any and all documents as may be necessary and appropriate to do so; and
6. The Receiver is authorized to immediately pay, upon closing of the sale, a commission of 6% of the final purchase price to broker Real Estate Results.

**IT IS SO ORDERED.**

Dated: August 4, 2017

  
Hon. Gonzalo P. Curiel  
United States District Judge